

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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In the Matter of)	
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Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
)	
Telecommunications Carriers Eligible for)	WC Docket No. 09-197
Universal Service Support)	
)	
Connect America Fund)	WC Docket No. 10-90
)	

Q LINK WIRELESS LLC'S PETITION FOR RECONSIDERATION

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October 28, 2016

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To the Wireline Competition Bureau:

Q LINK WIRELESS LLC’S PETITION FOR RECONSIDERATION

Q LINK Wireless LLC (“Q LINK”) respectfully submits this Petition for Reconsideration of the Bureau’s determination that ETCs cannot meet broadband minimum service standards when they offer a service plan that permits the customer to utilize the service for the full amount of the minimum standalone broadband service requirement, but which also allows the customer the option to substitute voice for data usage so as to consume less than the required minimum when fully utilizing the Lifeline offering.¹ On September 30, 2016, the Federal Communications Commission’s Wireline Competition Bureau (“Bureau”) issued a public notice in which it clarified that Eligible Telecommunications Carriers (“ETC”) do not meet the broadband

¹ See also Joint Lifeline ETC Petitioners’ Petition for Partial Reconsideration and Clarification at 11, WC Docket Nos. 11-42, 09-197, 10-90 (filed June 23, 2016) (“Joint Reconsideration Petition”).

minimum service standard, announced in the *Lifeline Modernization Order*,² with service offerings that decrement based on subscriber voice or broadband usage if decrementing results in the customer not having available at least the minimum required amount for the supported service.³ Although the Bureau ruled on issues presented in a petition for reconsideration and associated comments, it failed to entirely address the concerns raised in the comments. Accordingly, although the Bureau has now clearly expressed what the minimum service requirement is, it has failed to articulate any rationale for its conclusions. As such, its conclusion is arbitrary and capricious. As previously set forth in Q LINK's comments on the petition for reconsideration, this result is profoundly paternalistic and anti-consumer.⁴ It also creates difficulties in administering Lifeline voice and data plans in a coherent manner, given the different "lock-in" periods for data and voice plans. The Bureau should reconsider its conclusion and permit a customer to decrement its data allowance to levels below the minimum standard, provided that the consumer is offered the ability to utilize the offering for at least the required minimum amount of data service.

² See *Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, 31 FCC Rcd. 3962 (2016) ("*Lifeline Modernization Order*" or "*Order*").

³ *Wireline Competition Bureau Provides Guidance Regarding Designation as a Lifeline Broadband Provider and Lifeline Broadband Minimum Service Standards*, Public Notice, DA 16-1118, WC Docket Nos. 11-42, 09-197 ¶ 15 (Wireline Comp. Bur. Sept. 30, 2016) (the "*Public Notice*") (clarifying "that 'substitution' or 'decremented' bundled offerings do not fulfill the requirements of the Lifeline minimum service standards if they restrict a customer's access to the supported service for which the provider is claiming Lifeline reimbursement below the minimum service standard applicable to that supported service as a result of the customer's usage of some other service included in the bundled offering" (citing 47 CFR § 54.408(a)(1))).

⁴ See Comments of Q LINK Wireless LLC at 6, WC Docket Nos. 11-42, 09-197, 10-90 (filed July 29, 2016) ("Q LINK Comments").

Q LINK fully supports the FCC's efforts to reform the Lifeline program and to eliminate waste, fraud, and abuse. Q LINK stands ready to implement standalone broadband plans as soon as the new rules become effective, and has already sought designation as a Lifeline Broadband Provider ("LBP") in all its service areas nationwide. Q LINK will do its part to bring Lifeline into the broadband age. It simply does not want to be forced by an unduly narrow interpretation of the Commission's rules to compel low-income consumers to obtain more service than they need.

I. The Bureau Failed to Provide a Reasoned Basis for Not Allowing Consumers to Freely Exchange Voice and Data Usage.

As noted in the *Public Notice*, the issue of whether a Lifeline consumer can be permitted freely to exchange voice for data minutes (or vice versa) in a Lifeline plan that offers the minimum required amount of data or voice usage (e.g., 500 minutes of voice or 500 megabytes of data as of December 2, 2016) – referred to as “substitution” or “decremented” bundled offerings – was raised in a petition for reconsideration⁵ and comments filed in response thereto.⁶ In the first instance, the Bureau should reconsider its *Public Notice*, because it failed to address the points raised in the petition for clarification or reconsideration and the comments filed in support thereof. Both the Joint Reconsideration Petition and Q LINK's comments explained that barring decrementing such that a consumer's usage could be below the minimum standard levels both ignores the plain language of the Commission's *Lifeline Modernization Order*, and requires low-income consumers to purchase services that they do not want or need.⁷ The *Public Notice* announces a result – that decrementing below the required minimum level is not permitted – but

⁵ See Joint Reconsideration Petition at 11.

⁶ See, e.g., Q LINK Comments.

⁷ See Q LINK Comments at 5-6; Joint Reconsideration Petition at 11-12.

provides no analysis of the language of the *Lifeline Modernization Order*, and no explanation of why such a conclusion is reasonable as a matter of public policy.

It is well established that a regulatory agency cannot simply issue a ruling without any explanation. An agency's "conclusion is not 'clear' or 'obvious' merely because one says so."⁸ Rather, an agency's decision must be the product of a reasoned decision-making process. Indeed, under the Administrative Procedure Act, an agency decision must "provide sufficient factual detail and rationale" for a ruling to permit interested parties to meaningfully respond.⁹ Failure of reasoned decision-making includes failing to consider an important aspect of the problem (e.g., a material point of criticism raised in the comments or a suggested alternative to the proposed rule); offering an explanation that runs counter to the evidence; failing to recognize and explain changes in policy; or offering an explanation that is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.¹⁰ An adequate explanation is one that allows discernment of a "reasoned path" to the agency's decision.¹¹ The Bureau provided no such explanation here. Thus, the Bureau must reconsider its decision and

⁸ *Am. Petroleum Inst. v. EPA*, 216 F.3d 50, 57 (D.C. Cir. 2000).

⁹ *Fla. Power & Light Co. v. United States*, 846 F.2d 765, 771 (D.C. Cir. 1988); *see also* 5 U.S.C. § 553(b)(3) (stating that an agency decision must include "either the terms or substance of the proposed rule or a description of the subjects and issues involved").

¹⁰ *See, e.g., Allentown Mack Sales & Serv. v. NLRB*, 522 U.S. 359, 374 (1998); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009) (holding that, while an "agency need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate," it must do so "when, for example, its new policy rests upon factual findings that contradict those which underlay its prior policy," and continuing that, in such cases "a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy").

¹¹ *U.S. Info. Agency v. FLRA*, 960 F.2d 165, 169 (D.C. Cir. 1992).

provide the necessary reasoned explanation for why decrementing is not in the public interest, or it must reverse its conclusion – as both the best reading of the *Order* and sound policy dictate.

II. The Bureau Must Consider the Actual Language of the *Lifeline Modernization Order* When Determining Whether Service Offerings That Decrement Based on Subscriber Voice or Broadband Usage Meet the Minimum Service Standards.

As Q LINK and others previously set forth, the best reading of the *Order's* minimum service requirements permits consumers to trade voice for broadband usage, and vice versa, even if the result is that, in a given month, the consumer may, through his or her choice, be able to use less than the minimum number of standalone voice minutes – because he or she chose to substitute data usage, or similarly may be able to use less than the minimum amount of data usage because he or she chose to substitute voice usage.¹² Section 54.408(a)(1) of the Commission's rules defines the minimum service standard as the service level that an ETC must “provide” to end users. In the *Lifeline Modernization Order*, the Commission interprets “provide” as “make available.”¹³

Nonetheless, the Bureau has now provided guidance via the *Public Notice* that such a plan would not meet minimum standards if the consumer has the option to trade off data usage for voice usage and, in doing so, could find its data usage capped to a level below the minimum service level. Specifically, the Bureau states that such an option does “not provide a guaranteed level of voice minutes or data and . . . condition[s] subscribers' access to the Lifeline-supported service on the subscriber's use of other services provided in the bundle” and “would improperly allow Lifeline support for an offering that may not meet any minimum service standard.”¹⁴ At a

¹² See Q LINK Comments at 3; Joint Reconsideration Petition at 11-12.

¹³ See Q LINK Comments at 3-4; Joint Reconsideration Petition at 11-12.

¹⁴ *Public Notice* ¶ 15.

basic level, this is wrong. The consumer is always guaranteed to be able to use the maximum amount of data or voice achievable under the plan. What the plan does not do is limit the consumer only to using more than the specified minimum of either voice or data, irrespective of the consumer's actual need or choice. The Bureau's interpretation is irrational and profoundly anti-consumer, and neither the *Order* nor the *Public Notice* presents a reasonable explanation of a policy basis for such a reading.

The Bureau's reading simply does not meet the plain language of the rule. If Q LINK offers (as it would plan to do) a plan with 500 minutes of voice and 100 megabytes of data, but permits the consumer to exchange one minute of use of voice for one megabyte of data, that plan still "makes available" – and thus "provides" to the consumer – the use of 600 megabytes of data through substitution of voice for data, exceeding the 500 megabyte minimum. According to the plain language of the *Order*, this plan meets the minimum standards for broadband. However, under the guidance in the *Public Notice*, it would not. The Bureau provides no explanation of why, as a matter of plain language, this plan does not meet the broadband minimum requirement. Accordingly, the Bureau's action in the *Public Notice* is arbitrary and capricious.

III. Allowing ETCs to Meet the Broadband Minimum Service Standard with Service Offerings That Allow Consumers to Trade-off Voice or Broadband Usage Broadens Consumer Choice Without Forcing Consumers to Purchase Service They Do Not Want or Need.

There is also no reason to read the *Order* to compel such an anti-consumer result – and it is not good policy. In Paragraph 67 of the *Order*, the Commission stated, "We continue to allow low-income consumers to apply the Lifeline discount to support fixed and mobile bundles that include one or more of the supported services *so long as one of the supported services offered*

satisfies the minimum service standard requirements.”¹⁵ The Commission further explained, “In other words, the discount may be applied to a mobile bundle of voice and data services” – as in Q LINK’s proposed plan above – “so long as *either* the voice service *or* the data service meets the applicable minimum service standard.”¹⁶

The *Public Notice* interprets the *Lifeline Modernization Order* in the manner that overrides a consumer’s choice as to his or her own needs. The Bureau never explains why it is important – as a matter of public policy – to have minimum included broadband usage standards that force low-income consumers to buy more than they need. Low-income consumers, for whom discretionary income is scarce, should not to be forced to purchase more data capacity (or more voice usage) than they need; to mandate such a result is both disrespectful and highly paternalistic. Low-income consumers, like everyone else, should be able to buy as much telecommunications service – voice or data – as they need without being compelled to purchase a minimum amount that the FCC deems best. Reconsidering the *Public Notice* to permit decrementing when an offering allows for use at or above the required minimum data or voice usage level satisfies the Commission’s goal of widening access to broadband while at the same time respecting broadened consumer choice.

IV. The Bureau Should Also Consider the Administrative Difficulties Created by Its Guidance Precluding Decrementing to Permit Flexible Actual Usage.

Finally, the Bureau should take into account the administrative difficulties and consumer confusion that its guidance prohibiting flexible use below the minimum standard levels for voice or data will create. As just one example, the rules establish a non-portability period for the

¹⁵ *Lifeline Modernization Order* ¶ 67 (emphasis added).

¹⁶ *Id.* (emphasis in original).

Lifeline benefit of 12 months for a qualifying broadband service, but only 60 days for a qualifying voice plan.¹⁷ Providers will be marketing broadband plans anywhere they have an LBP or state ETC designation, but can only market voice plans meeting the voice, but not the data, minimum requirements in areas covered by a state-designated ETC.

This will lead to a lot of customer confusion. By permitting decrementing, and thus permitting consumers to have more flexibility in how they use the plans they choose, the Commission can promote greater harmonization of plans around the Lifeline Broadband Plan requirements, and limit the applicability of the voice rules to plans that are truly voice only with no capability of meeting the minimum data service requirements. This will lead to much less consumer frustration and confusion.

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¹⁷ See *Lifeline Modernization Order* at 4139 (to be codified at 47 C.F.R. § 54.411).

V. Conclusion

Expanded consumer choice is a worthy goal of the *Lifeline Modernization Order*. It is for this reason that Q LINK again urges the Commission to carefully consider the consumer choice implications of failing to reconsider the broadband minimum service standard as it relates to mixed voice and broadband service offerings. Granting Q LINK's Petition for Reconsideration of the broadband minimum service standard rules, insofar as they apply to the ability to trade off voice and broadband usage in plans that would meet the minimum standards if used on a standalone basis, will ensure that consumers are not forced to purchase more than they need. Reconsideration will also ensure that it remains feasible for ETCs to offer useful packages.

Respectfully submitted,



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